

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

SABRINIA E. EVANS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 4:16-CV-00020
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

DEFENDANT'S MOTION TO DISMISS

The Defendant, United States of America, by counsel, Kartic Padmanabhan, Assistant United States Attorney, respectfully moves this Court for dismissal of this action pursuant to Federal Rules of Civil Procedure 4(m) and 12(b)(5) for insufficient service of process. The reasons for this request are set forth below.

1. On May 3, 2016, the Plaintiff filed the complaint in the above-styled case (ECF 1).
2. On June 20, 2016, a summons was issued and directed to the United States of America, c/o John P. Fishwick, Jr., United States Attorney, United States Attorney's Office, Roanoke, Virginia (ECF 3).
3. On July 12, 2016, the Court issued a notice to the Plaintiff advising that she had until August 1, 2016 to notify the Court that service had been accomplished on the Defendant (ECF 4).

4. On July 13, 2016, the Plaintiff returned a copy of the summons previously issued to the Court with a handwritten note by Plaintiff's counsel stating "I personally mailed by certified mail the summons & complaint to U.S. Attorney Fishwick at his last-known address. Copy of mailing attached." (ECF 5).

5. On July 15, 2016, the U.S. Attorney's Office received a copy of the summons and complaint via certified mail from Plaintiff's counsel.

6. On July 19, 2016, the Defendant sent a letter to Plaintiff's counsel advising that he failed to effect proper service and directing him to Federal Rule of Civil Procedure 4(i). A copy of this letter was docketed with the Court (ECF 6).

7. On July 19, 2016, the Defendant received an e-mail from the Plaintiff's counsel stating that he had received the Defendant's letter and would correct service, a copy of which e-mail is attached as Exhibit A.

8. On July 21, 2016, a second copy of the summons and complaint was served on the United States Attorney's Office thru one of its designated civil process clerks, Paralegal Nancy Withers.

9. On July 22, 2016, a third copy of the summons and complaint was received by the U.S. Attorney's Office via certified mail from Plaintiff's counsel.

10. Rule 4(i)(1) states that:

"To serve the United States, a party must:

(A)(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought-or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk-or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a non-party agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

11. Plaintiff had until August 1, 2016 to perfect service on the Defendant and to file proof of service with the Court. As of the date of this filing, the Plaintiff has not done so. Specifically, Plaintiff has failed to serve the Attorney General of the United States, in accordance with Rule 4(i)(1)(B), even after being advised to do so. *See, e.g.* Ex. A.

As outlined above, Defendant has attempted to resolve the service deficiencies with Plaintiff prior to the filing of the instant motion, but these efforts have been unsuccessful. Therefore, the Defendant respectfully asks the Court to dismiss this case.

Respectfully submitted,

JOHN P. FISHWICK, JR.
United States Attorney

Date: September 20, 2016

/s/ Kartic Padmanabhan
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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2016, I filed the foregoing Motion to Dismiss using the Court's CM/ECF system, which will provide electronic notice to the following:

Sidney H. Kirstein, Esquire
1319 C Enterprise Drive
Lynchburg, VA 24502

/s/ Kartic Padmanabhan
Kartic Padmanabhan
Assistant United States Attorney